

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2011-053199

11/28/2011

HONORABLE GEORGE H. FOSTER, JR.

CLERK OF THE COURT  
J. Polanco  
Deputy

NICOLA RADOGNA

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P O BOX 19886  
FOUNTAIN HILLS AZ 85269

v.

M & I MARSHALL & ILSLEY BANK, et al.

SCOTT L POTTER

**RULING**

On September 8, 2011 the Attorneys for the Defendants filed a Motion to Dismiss for failure to state a claim upon which relief may be granted. The Plaintiff has not filed a Response. The Court having considered the Motion and the attachments thereto, as well as the relevant portions of the record in the matter, finds as follows.

By failing to file a Response to the Motion, Plaintiff has waived any procedural or evidentiary arguments or objections that could have been made in response to the Motion. *Johnson by Johnson v. Svidergol*, 157 Ariz. 333, 335 (App. 1988). According to A.R.S. Rules of Civil Procedure, Rule 7.1, "each opposing party shall within ten days thereafter serve and file any answering memorandum." The effect of non-compliance to Rule 7.1 Ariz. R. Civ. Pro. may be deemed as consent to the denial or granting of the motion, and the court may dispose of the motion summarily.

**IT IS SO ORDERED** granting the Motion to Dismiss filed by the Defendants.

**IT IS FURTHER ORDERED** awarding Defendants' costs and attorney's fees pursuant to A.R.S. §§12-341 and 12-341.01.

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This all in accordance with the formal written Order signed by the Court on November 23, 2011 and filed (entered) by the Clerk on November 28, 2011.

**ALERT:** Effective September 1, 2011, the Arizona Supreme Court Administrative Order 2011-87 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.